

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRANDON MONTEZ,

Plaintiff,

v.

Case No. 22-cv-12526
Honorable Linda V. Parker

JAMES LOXTON, et al.

Defendants.

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
DECEMBER 12, 2024 REPORT AND RECOMMENDATION**

Plaintiff Brandon Montez, proceeding pro se, commenced this lawsuit pursuant to 42 U.S.C. § 1983 against Defendants James Loxton, Corey Bruck, James Hamameh, George Stephenson, John Doe, and Brandi Qualls (collectively “Defendants”) on October 5, 2022.¹ (*See* ECF Nos. 1, 28.) Plaintiff alleges that, while he was incarcerated at Macomb Correctional Facility, Defendant Loxton allowed two inmates to enter his cell. (ECF No. 1.) Plaintiff further alleges that Defendant locked the inmates inside his cell and the two inmates sexually assaulted him. (*Id.*) The matter has been assigned to Magistrate Judge Anthony P. Patti for all pretrial proceedings, including a hearing and determination of all non-

¹ The matter was transferred to this district on October 20, 2022. (*See* ECF No. 1.) Plaintiff filed an amended complaint on October 13, 2023, adding additional defendants. (ECF No. 28.)

dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 16.)

On March 4, 2024, Defendants Bruck and Hamameh filed a motion to dismiss the amended complaint. (ECF No. 44.) On April 3, 2024, Defendants Qualls and Stephenson also filed a motion to dismiss. (ECF No. 50.) Magistrate Judge Patti entered orders requiring Plaintiff to respond to the motions by April 18, 2024, and July 5, 2024, respectively. (*See* ECF Nos. 46, 52.) Plaintiff did not file responses to either motion. As a result, on November 14, 2024, Magistrate Judge Patti ordered Plaintiff to show cause, in writing, by December 6, 2024, as to: (1) why this case should not be dismissed under Federal Rule of Civil Procedure 41(b) and Eastern District of Michigan Local Rule 41.2 for failure to comply with the court's orders and/or Federal Rule of Civil Procedure 41(b) for failure to prosecute and (2) a reasonable, extended deadline for filing a response to Defendants' pending motions to dismiss, should the court permit responses. (ECF No. 53 at Pg ID 232-33.)

Plaintiff did not respond to Magistrate Judge Patti's Order to Show Cause. Accordingly, Magistrate Judge Patti issued a report and recommendation ("R&R") on December 12, 2024, recommending that the Court dismiss this matter pursuant to Federal Rule of Civil Procedure 41(b) and deem moot Defendants' pending

motions. (ECF No. 54 at Pg ID 237-38.) At the conclusion of his R&R, Magistrate Judge Patti advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at Pg ID 238.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (*Id.* at Pg ID 238-39.) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Patti. The Court therefore adopts the R&R.

Accordingly,

IT IS ORDERED that this matter is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Defendants’ motions (ECF Nos. 44, 50) are **MOOT**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: January 6, 2025

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, January 6, 2025, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan
Case Manager